

1 LAURENCE F. PULGRAM (CSB No. 115163)
lpulgram@fenwick.com

2 JENNIFER L. KELLY (CSB No. 193416)
jkelly@fenwick.com

3 CLIFFORD C. WEBB (CSB NO. 260885)
cwebb@fenwick.com

4 FENWICK & WEST LLP

555 California Street

San Francisco, CA 94104

Telephone: 415.875.2300

6 Facsimile: 415.281.1350

7 Attorneys for Plaintiff and Counterdefendant
NEXTDOOR.COM, INC. and Counterdefendant
8 PRAKASH JANAKIRAMAN

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA

11 SAN FRANCISCO DIVISION

12
13 NEXTDOOR.COM, INC., a Delaware
14 corporation,

15 Plaintiff,

16 v.

17 RAJ ABHYANKER, an individual,

18 Defendant.

19 RAJ ABHYANKER, an individual,

20 Counterclaimant,

21 v.

22 NEXTDOOR.COM, INC., a Delaware
23 corporation; PRAKASH JANAKIRAMAN, an
24 individual; BENCHMARK CAPITAL
25 PARTNERS, L.P., a Delaware limited
26 partnership; BENCHMARK CAPITAL
27 MANAGEMENT CO. LLC, a Delaware limited
28 liability company; SANDEEP SOOD, an
individual; MONSOON ENTERPRISES, INC., a
California corporation, and DOES 1-50,
inclusive,

Counterdefendants.

Case No.: 3:12-cv-05667-EMC

**NEXTDOOR.COM, INC. AND
PRAKASH JANAKIRAMAN'S NOTICE
OF MOTION AND MOTION TO
DISMISS FIRST AMENDED
COUNTERCLAIMS AND STRIKE
AFFIRMATIVE DEFENSES**

Date: June 6, 2013

Time: 1:30 p.m.

Judge: Honorable Edward M. Chen

TABLE OF CONTENTS

	<u>Page</u>
NOTICE OF MOTION AND MOTION	1
MEMORANDUM OF POINTS AND AUTHORITIES	2
INTRODUCTION	2
STATEMENT OF ISSUES TO BE DECIDED	4
FACTUAL BACKGROUND	4
A. Abhyanker's Failed Nextdoor/Fatdoor Concept	4
B. Nextdoor.com and Prakash Janakiraman	7
C. Abhyanker's Litigation Against Nextdoor.com	8
D. The Present Proceedings	9
ARGUMENT	11
I. ANY TRADE SECRET RIGHTS IN THE NEXTDOOR NAME AND CONCEPT DISAPPEARED WHEN THEY WERE PUBLICLY DISCLOSED.....	13
II. ABHYANKER HAS NOT ADEQUATELY ALLEGED TRADE SECRET MISAPPROPRIATION.....	15
A. Abhyanker Has Failed to Allege How Nextdoor.com or Janakiraman Wrongfully Acquired or Used His Trade Secrets.	16
1. Abhyanker Has Failed to Allege Wrongful Acquisition.....	16
2. Abhyanker Has Failed to Allege Wrongful Use.	19
B. Abhyanker Has No Plausible Theory of Damages.	20
III. ABHYANKER ADMITTEDLY DOES NOT OWN ANY OF THE PURPORTED TRADE SECRETS ASSERTED HERE.	20
IV. ABHYANKER'S AFFIRMATIVE DEFENSES ARE INSUFFICIENT AND SHOULD BE STRUCK.....	23
CONCLUSION	24

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>Adams v. Vivo Inc.</i> , C 12-01854, 2012 U.S. Dist. LEXIS 109199 (N.D. Cal. Aug. 3, 2012).....	12
<i>Ansari v. Elec. Document Processing, Inc.</i> , No. 5:12-cv-01245, 2012 U.S. Dist. LEXIS 128622 (N.D. Cal. Sep. 10, 2012)	23
<i>Architectural Mailboxes, LLC v. Epoch Design, LLC</i> , Case No. 10-cv-974, 2011 U.S. Dist. LEXIS 46180 (S.D. Cal. Apr. 28, 2011).....	11, 15
<i>Ashcroft v. Iqbal</i> , 129 S. Ct. 1937 (2009).....	11
<i>Bauer v. Goss</i> , C 12-00876, 2012 U.S. Dist. LEXIS 95334 (N.D. Cal. July 10, 2012).....	12, 21, 22
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	3, 11
<i>Bespaq Corp. v. Haoshen Trading Co.</i> , No. C 04-3698, 2005 WL 14841 (N.D. Cal Jan. 3, 2005)	16, 18
<i>Burbank-Glendale-Pasadena Airport Authority v. City of Burbank</i> , 136 F.3d 1360 (9th Cir. 1998).....	5
<i>Burch v. GMAC Mortgage, LLC</i> , No. C-09-4214, 2010 U.S. Dist. LEXIS 23659 (N.D. Cal. Mar. 15, 2010).....	12
<i>California Police Activities League v. California Police Youth Charities, Inc.</i> , No. C 08-1991, 2009 WL 537091 (N.D. Cal. Mar. 3, 2009)	20
<i>Champlaie v. BAC Home Loans Servicing, LP</i> , 706 F. Supp. 2d 1029 (E.D. Cal. 2009).....	12
<i>Clegg v. Cult Awareness Network</i> , 18 F.3d 752 (9th Cir. 1994).....	12
<i>Computer Sciences Corp. v. Computer Assocs. Int'l, Inc.</i> , CV 98-1374, 1999 U.S. Dist. LEXIS 21803 (C.D. Cal. Aug. 13, 1999).....	20
<i>Coto Settlement v. Eisenberg</i> , 593 F.3d 1031 (9th Cir. 2010).....	12
<i>Diodes, Inc. v. Franzen</i> , 260 Cal. App. 2d 244 (1968).....	18
<i>Falcocchia v. Saxon Mortg., Inc.</i> , 709 F. Supp. 2d 873 (E.D. Cal. 2010).....	12, 21

1	<i>Farhang v. Indian Institute of Technology,</i>	
2	08-02658, 2010 WL 2228936 (N.D. Cal. June 1, 2010)	16, 18
3	<i>Forcier v. Microsoft Corp.,</i>	
4	123 F. Supp. 2d 520 (N.D. Cal. 2000)	13
5	<i>Hynix Semiconductor Inc. v. Rambus Inc.,</i>	
6	CV-00-20905, 2007 U.S. Dist. LEXIS 97677 (N.D. Cal. Nov. 15, 2007)	23
7	<i>In re SRAM Antitrust Litig.,</i>	
8	580 F. Supp. 2d 896 (N.D. Cal. 2008)	11
9	<i>Intri-Plex Technologies, Inc. v. Crest Grp., Inc.,</i>	
10	499 F.3d 1048 (9th Cir. 2007).....	12
11	<i>Les Concierges, Inc. v. Robeson,</i>	
12	C-09-1510, 2009 U.S. Dist. LEXIS 39414 (N.D. Cal. Apr. 27, 2009)	18
13	<i>MedioStream, Inc. v. Microsoft Corp.,</i>	
14	869 F. Supp. 2d 1095 (N.D. Cal. 2012)	19
15	<i>Monster Cable Products, Inc. v. Avalance Corp.,</i>	
16	No. 08-4792, 2009 U.S. Dist. LEXIS 23747 (N.D. Cal. Mar. 11, 2009).....	23
17	<i>Moss v. U.S. Secret Serv.,</i>	
18	572 F.3d 962 (9th Cir. 2009).....	11
19	<i>Nexsales Corp. v. Salebuild, Inc.,</i>	
20	No. C-11-3915, 2012 WL 216260 (N.D. Cal. Jan. 24, 2012) (Chen, J.)	15, 16
21	<i>Parrino v. FHP, Inc.,</i>	
22	146 F.3d 699 (9th Cir. 1998).....	12
23	<i>Pellerin v. Honeywell Int'l Inc.,</i>	
24	11-CV-01278, 2012 U.S. Dist. LEXIS 94635 (S.D. Cal. July 6, 2012)	16, 17, 18, 19
25	<i>Perez v. Gordon & Wong Law Group, P.C.,</i>	
26	No. 11-cv-03323, 2012 U.S. Dist. LEXIS 41080 (N.D. Cal. Mar. 26, 2010).....	23
27	<i>Reyn's Pasta Bella, LLC v. Visa USA, Inc.,</i>	
28	442 F.3d 741 (9th Cir. 2006).....	5
	<i>Shwarz v. United States,</i>	
	234 F.3d 428 (9th Cir. 2000).....	12
	<i>Steckman v. Hart Brewing Inc.,</i>	
	143 F.3d 1293 (9th Cir. 1988).....	12
	<i>Tripati v. Thomson,</i>	
	CV 03-1122, 2005 U.S. Dist. LEXIS 38093 (D. Ariz. Dec. 27, 2005).....	12, 13, 21
	<i>Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.,</i>	
	587 F.3d 1339 (Fed. Cir. 1999).....	13, 15

STATUTES

Cal. Civ. Code§ 3246.1(b)(1)..... 16, 19

Cal. Civ. Code § 3246.1(b)(2)..... 6

RULES

Federal Rule of Civil Procedure 8(a) 1

Federal Rule of Civil Procedure 12(b)(6) 1,11

Federal Rule of Civil Procedure 12(f).....

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

NOTICE OF MOTION AND MOTION**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on June 6, 2013 at 1:30 p.m., or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Edward M. Chen, 450 Golden Gate Avenue, San Francisco, California, Plaintiff and Counterdefendant Nextdoor.com, Inc. and Counterdefendant Prakash Janakiraman will and hereby do move for an order (1) dismissing Defendant and Counterclaimant Raj Abhyanker's First Amended Counterclaim pursuant to Federal Rules of Civil Procedure 12(b)(6) and 8(a), and (2) striking certain of his affirmative defenses in his First Amended Answer pursuant to Federal Rule of Civil Procedure 12(f). This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice, the accompanying declaration of Jennifer L. Kelly in support thereof, the pleadings and other papers on file in this action, and any other oral or written submissions as the Court may entertain.

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff and Counterdefendant Nextdoor.com, Inc. (“Nextdoor.com” or the “Company”) is a growing Internet success story. After years of hard work and experimentation with different business models, it has a hit with a neighborhood-based online social network focused on helping neighbors connect, called “Nextdoor.” Defendant and Counterclaimant Raj Abhyanker (“Abhyanker”) once worked for a completely unrelated company that pursued a similar concept before firing him and abandoning the idea in 2007. Abhyanker is now looking to get a piece of Nextdoor.com’s success through serial litigation against the Company, its founders and investors. Since Nextdoor.com’s website launched in October 2011, Abhyanker has filed and dismissed an action in California Superior Court (Santa Clara County), Case No. 1-11-cv-212924 (the “State Court Action”), filed two separate oppositions to Nextdoor.com’s pending application for the “NEXTDOOR” trademark, and filed his original Answer and Counterclaim in this Action (which he opted to amend rather than oppose the motions to dismiss filed by all counterdefendants¹)—all challenging the Company’s right to its independently developed business and name. Yet nowhere in these hundreds of pages of allegations has Abhyanker cogently identified anything that Nextdoor.com or its founders did wrong.

The Amended Counterclaim is no different. As in his previous pleadings, Abhyanker posits, based on nothing but rank (and wrong) conjecture, that Nextdoor.com’s founders, including Counterdefendant Prakash Janakiraman (“Janakiraman”), pursued a four-year conspiracy to steal an idea he had for a neighborhood-based social networking website to be called “Nextdoor.” As just one example, Abhyanker does not allege *facts* demonstrating that Janakiraman actually had access to his purported trade secrets—or even identify what purported trade secrets Nextdoor supposedly has used. Rather, Abhyanker concludes that Janakiraman *must have* gotten access to some unidentified secrets in late 2010 from Counterdefendant Sandeep Sood (to whom Abhyanker allegedly disclosed them four years earlier), because Janakiraman and

¹ Each of these three motions, which had been set for hearing on May 9, 2013, were withdrawn following Abhyanker’s filing of the First Amended Answer and Counterclaim (“AC” or “Amended Counterclaim”) which superseded the pleadings they moved to dismiss. *See* Dkt. 59.

1 Sood “both attended . . . Berkeley” and have “been friends . . . since at least 1995.” *See* AC ¶¶
 2 138-141. This conclusion is nothing short of absurd. And it certainly does not comport with the
 3 requirement to plead facts demonstrating a plausible entitlement to relief under *Bell Atl. Corp. v.*
 4 *Twombly*, 550 U.S. 544, 570 (2007).

5 In fact the most meaningful difference between the Amended Counterclaim and
 6 Abhyanker’s previously dismissed lawsuit is the Amended Counterclaim’s effort to contradict
 7 Abhyanker’s prior admissions. In the State Court Action, Abhyanker admitted that it was his
 8 previous corporate employer, Fatdoor, Inc.—not Abhyanker personally—who owned any
 9 purported trade secrets in this space, and that the assets of Fatdoor have since been acquired by
 10 Google, Inc. This stands to reason, given that Abhyanker has consistently alleged that he
 11 disclosed his Nextdoor concept to Counterdefendant Benchmark Capital in connection with an
 12 attempt to raise funding for his employer Fatdoor. Fatdoor’s ownership of the purported trade
 13 secrets, unequivocally admitted by Abhyanker a year ago, deprives him of standing to assert
 14 claims he does not possess. When this lack of standing was presented by demurrer in the State
 15 Court Action, Abhyanker unilaterally dismissed his claims. He cannot resurrect those same failed
 16 claims here by alleging, directly contrary to his prior allegations, that he *personally* owns the
 17 purported trade secrets. His prior judicial admission on this point is binding. The Court can
 18 dismiss the Amended Counterclaim on this basis alone.

19 Yet there are further independent bases upon which the Amended Counterclaim should be
 20 dismissed. *First*, the only “trade secret” that Abhyanker alleges Nextdoor.com or Janakiraman
 21 used—the idea for a neighborhood-based social networking website called “Nextdoor”—was
 22 *disclosed in a patent application Abhyanker filed that was published before the alleged*
 23 *misappropriation*. Thus, any trade secret protection that theoretically existed in that idea was
 24 long since surrendered. *Second*, Abhyanker does not come close to alleging the facts necessary
 25 to state a claim for trade secret misappropriation, the only cause of action he attempts to state. He
 26 has failed, *inter alia*, to demonstrate that Nextdoor.com or Janakiraman acquired or used any
 27 trade secrets, or to demonstrate use with knowledge that they were improperly obtained, or that he
 28 was damaged in any way. Because, even after an amendment that attempted to address these

defects, Abhyanker's new pleading remains fatally deficient in at least three respects, his trade secret misappropriation claim against Nextdoor.com and Janakiraman should be dismissed with prejudice.

Additionally, in his Amended Answer to Nextdoor.com's DJ Complaint (which actually contains no amendments in response to Counterdefendants' Motion to Strike), Abhyanker has asserted no fewer than sixteen affirmative defenses, most of which are spurious on their face. In nearly each instance, these defenses are supported by nothing but a bare recitation of the doctrine and a conclusory claim that it bars Nextdoor.com's right to relief. Such pleading leaves both Nextdoor.com and the Court to speculate upon what facts, if any, these defenses are premised. This is insufficient as a matter of law, and these affirmative defenses should be stricken.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether Abhyanker can pursue a trade secret misappropriation claim where the purported secrets were publically disclosed in a judicially noticeable patent application filed by his former employer prior to any alleged misappropriation.
2. Whether Abhyanker can state a trade secret misappropriation claim where he does not allege any facts substantiating how any purported secrets were acquired or used, much less facts showing wrongful acquisition or use, or any facts plausibly showing that he was harmed.
3. Whether Abhyanker can pursue trade secret misappropriation claims for purported secrets owned by his former employer, not himself, now and at the time of the alleged misappropriation.
4. Whether Abhyanker can plead affirmative defenses with no factual support.

FACTUAL BACKGROUND

A. Abhyanker's Failed Nextdoor/Fatdoor Concept

According to his Amended Counterclaim, Abhyanker thought up a concept for a neighborhood-based social networking website in late 2006. AC ¶ 109. At that time, Abhyanker was employed by a corporation named Fatdoor, Inc., which was funded by investors in Silicon Valley, and which launched a beta neighborhood social website at www.fatdoor.com. See Request for Judicial Notice ("RJN") Ex. 3 (First Amended Complaint in State Court Action, hereinafter, "FAC") ¶¶ 3, 20, 94; AC ¶ 128.² Abhyanker's original allegations in the State Court

² As explained in the accompanying Request for Judicial Notice, this Court may take judicial

1 Action referred to this idea as the “Nextdoor/Fatdoor” concept. Those allegations further explain
 2 that Abhyanker formed an entity called Fatdoor, Inc. to pursue what he described as the
 3 “Nextdoor/Fatdoor” concept, characterizing the “Nextdoor/Fatdoor business model” as
 4 “neighborhood social networking.” See FAC ¶¶ 3, 21, 84-85, 94; see also RJN Ex. 6 (Trial
 5 Trademark and Appeal Board Opposition, “Second Opposition”) ¶ 9 (discussing Fatdoor’s use of
 6 the FATDOOR mark in connection with “The Nextdoor/Fatdoor concept”). Abhyanker alleged
 7 that he was working on behalf of his then-employer Fatdoor in developing this Nextdoor/Fatdoor
 8 concept, and that Fatdoor owned the resulting intellectual property. See, e.g., FAC ¶¶ 3, 20, 21,
 9 23, 55, 107, 109, 111 (“[t]he entire basis for Nextdoor.com, Inc.’s business rests on these stolen
 10 and misappropriated materials now owned by Google, Inc. through its acquisition of the
 11 Nextdoor/Fatdoor patent portfolio”). According to Abhyanker, “[he] and Fatdoor, Inc. intended
 12 to purchase the ‘www.nextdoor.com’ domain name shortly after Series B funding. Due to issues
 13 with procuring the ‘www.nextdoor.com’ domain, Fatdoor, Inc., used the name ‘Fatdoor.com’ as a
 14 second preference until the ‘www.nextdoor.com’ domain could be acquired.” RJN Ex. 4 ¶ 14
 15 (Trial Trademark and Appeal Board Opposition (“First Opposition”)). While Fatdoor allegedly
 16 mocked up a Nextdoor website, it never acquired the www.nextdoor.com domain name or
 17 launched a website using that name. *Id.*; FAC ¶¶ 30-32, 35.

18 Following demurrers in the State Court Action arguing that Abhyanker had no standing to
 19 pursue his trade secret misappropriation claims due to Fatdoor and eventually Google’s
 20 ownership of the purported trade secrets at issue, Abhyanker changed his story. He alleged in his
 21 original Counterclaim in this action that he *personally* developed and owned the trade secrets
 22 covering what he then referred to as just the “Nextdoor” concept, now claiming it was totally
 23 separate and distinct from his Fatdoor concept. Dkt. 16 (“Counterclaim”) ¶ 110. But in the face
 24 of motions to dismiss filed by each of the counterdefendants arguing, *inter alia*, that Abhyanker

25
 26 notice of the contents of Abhyanker’s pleadings in the State Court Action and consider them
 27 without converting this motion into one for summary judgment. See, e.g., *Reyn’s Pasta Bella,*
 28 *LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of court
 documents and pleadings in related litigation); *Burbank-Glendale-Pasadena Airport Authority v.*
City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice, in federal action, of
 pleadings filed in California Superior Court).

1 lacks standing to pursue a misappropriation claim based on trade secrets he did not own,
 2 Abhyanker has changed his story yet again. Now, in his Amended Counterclaim, he contends he
 3 developed the trade secrets at issue for an entirely *different* company called LegalForce, Inc.,
 4 which he alleges was based on the “concept of a private online social network for *inventors*.” AC
 5 ¶¶ 109, 111 (emphasis added). Abhyanker further alleges he developed a “separate spin off idea
 6 using the same code base called Nextdoor.” AC ¶ 109. Abhyanker now refers to these combined
 7 ideas as the “LegalForce/Nextdoor” concept. *Id.* at ¶ 119. Abhyanker continues to maintain that
 8 his “LegalForce/Nextdoor” concept is separate and distinct from his Fatdoor concept. *Id.* ¶ 119.
 9 Yet his attempt to distance his “Nextdoor” concept even further from Fatdoor only serves to
 10 underscore the implausibility of his assertion that he would have disclosed “Nextdoor” trade
 11 secrets to Benchmark in connection with his attempts to secure funding for his other company,
 12 Fatdoor. *See, e.g., id.* ¶¶ 129-134; FAC ¶ 92 (explaining that Benchmark declined to invest in
 13 Fatdoor, Inc.). Indeed, the more Abhyanker changes his story, the less sense it makes. In this
 14 case, Abhyanker’s fiction is actually stranger than truth.

15 But regardless of how he attempts to characterize his purported trade secrets relating to an
 16 online social network for neighbors, Abhyanker cannot evade the judicially-noticeable fact that he
 17 publicly disclosed those secrets by filing a patent application that was published to the world at
 18 least as early as September 20, 2007. RJN Ex.1 (App. No. 11/603,442 (the “‘442 Application”)).
 19 This publication occurred more than four years before the public launch of Nextdoor.com’s
 20 website. AC ¶ 159. That patent application *described in detail the concept and operation of a*
 21 *neighborhood social networking service to be called either Fatdoor or Nextdoor.* RJN Ex. 1 at
 22 Figures 20, 22 & ¶ 236 (emphasis added). Indeed, that is how Abhyanker’s Amended
 23 Counterclaim itself characterizes the patent. AC ¶ 167 (explaining that Abhyanker’s patent
 24 applications for the Nextdoor/Fatdoor concept “relate generally to geo-spatial database,
 25 architecture, and application technologies associated with neighborhood communication and
 26 social networking”). Abhyanker subsequently assigned the ‘442 Application along with
 27 “hundreds of pages of documents that became the basis for more than 46 patent applications” to
 28 Fatdoor on or about February 1, 2007. AC ¶ 114.

1 Abhyanker's tenure at Fatdoor was cut short; by his own admission he was terminated by
 2 its board of directors in July 2007. FAC ¶ 107. Thereafter, Fatdoor abandoned the idea of a
 3 neighborhood social networking website and transitioned into a local website for mothers to plan
 4 events, changing its name to Center'd. *Id.* ¶ 111. That business then transitioned again into the
 5 local deal space and changed its name to DealMap. *Id.* Finally, in August 2011, DealMap—
 6 along with all of its intellectual property—was acquired by Google. *Id.* Notably, Abhyanker
 7 does not allege—in the Amended Counterclaim or elsewhere—that he ever reacquired any
 8 intellectual property relating to the Nextdoor/Fatdoor concept from Fatdoor or any of its
 9 successors-in-interest.

10 **B. Nextdoor.com and Prakash Janakiraman**

11 In December 2007, after Fatdoor had already abandoned the neighborhood social
 12 networking space, fired Abhyanker, and changed its name, the company that would eventually
 13 become Nextdoor.com (referred to here as the “Company”) was founded as SPN, Inc. AC ¶ 107.
 14 One of the three founders of the Company was Janakiraman. *Id.* ¶ 97. In January, 2008, SPN,
 15 Inc. changed its name to Round Two, Inc. *Id.* ¶ 107. After nearly two years of work, the
 16 Company launched an online almanac of professional and college athletes at www.fanbase.com.
 17 *See id.* In conjunction with this launch, the Company changed its name to Fanbase, Inc. *Id.*
 18 Over the next year, Fanbase, while achieving some success, failed to get the traction that was
 19 hoped for, and the company decided to change direction. Fanbase began considering new
 20 business concepts. In the spring of 2010, the Company decided on an online neighborhood social
 21 networking concept. Dkt. 1 ¶14. In January 2011, the Company acquired the domain name
 22 www.nextdoor.com (AC ¶ 154)³ and the Company changed its name to Nextdoor.com, Inc. a few
 23 months later. *Id.* ¶ 158. On February 8, 2011, Nextdoor applied for a federal registration for the
 24 “NEXTDOOR” trademark for local social networking. *Id.* ¶ 157. On October 26, 2011,
 25 Nextdoor.com publicly launched its online neighborhood social networking service at

26
 27 ³ As Abhyanker has acknowledged, the www.nextdoor.com domain name was acquired from a
 28 manufacturer of door frames called “Next Door LLC.” *See* First Opposition ¶ 29. Abhyanker
 never acquired, or used, that domain, nor sought to register it as a trademark until after the
 Company's public launch of nextdoor.com.

1 www.nextdoor.com. *Id.* ¶ 159.

2 **C. Abhyanker's Litigation Against Nextdoor.com**

3 On November 10, 2011, Abhyanker filed his initial complaint in the State Court Action.
 4 In addition to suing Nextdoor.com, he also named as defendants several of its founders and
 5 investors, including Benchmark Capital. *See* RJN Ex. 2 (“Complaint”). Abhyanker filed a First
 6 Amended Complaint in that action on December 6, 2011. *See* FAC (RJN Ex. 3). The State Court
 7 Action, like Abhyanker’s Amended Counterclaim, asserted a claim for misappropriation of trade
 8 secrets as well as related causes of action relating to Nextdoor.com’s business concept and name.
 9 Abhyanker’s previous formulations of his claims were based on a number of outlandish theories,
 10 including a prejudice against Arizonans in favor of Texans within Nextdoor.com’s investor
 11 Benchmark (FAC ¶¶ 142-43), a bias in favor of “hunters” at Benchmark (*id.* ¶ 144), a “culture of
 12 communism” purportedly leading to the stealing of ideas within Benchmark (*id.* ¶ 145), and a
 13 prejudice against married fathers with children, like Abhyanker, at Benchmark (*id.* ¶¶ 147-48).
 14 Apart from these oddities, the gist of Abhyanker’s allegations in the State Court Action were that
 15 he had rights in the idea for an online social networking service to be called “Nextdoor” (referred
 16 to as the Nextdoor/Fatdoor concept), and that the defendants had misappropriated it. *Id.* ¶¶ 20-23.

17 As noted above, in marked contrast to his Amended Counterclaim here, Abhyanker’s
 18 pleadings in the State Court Action acknowledged that Google, Inc.—not Abhyanker—owns any
 19 intellectual property at issue. *See* Complaint ¶ 5; FAC ¶ 23 (“[t]he entire basis for Nextdoor.com,
 20 Inc.’s business rests on these stolen and misappropriated materials *now owned by Google, Inc.*
 21 through its acquisition of the Nextdoor/Fatdoor patent portfolio”); *see also* FAC ¶ 169 (“Google,
 22 Inc. now owns the rights to the original technology of the Nextdoor/Fatdoor concept”). Based on
 23 these concessions, Nextdoor.com and Benchmark demurred to Abhyanker’s FAC on the basis
 24 that Abhyanker did not have standing to sue, as he did not own any of the intellectual property at
 25 issue.

26 On January 20, 2012, while the demurrers were pending, Abhyanker filed a Notice of
 27 Opposition to Nextdoor.com’s application to register the NEXTDOOR mark with the Trademark
 28 Trial and Appeal Board (“TTAB”). RJN Ex. 4 (January 20, 2012 Notice of Opposition (“First

Opposition’’).⁴ In this First Opposition, Abhyanker claimed, *inter alia*, that the mark was invalid due to Abhyanker’s prior rights in the term “nextdoor,” as referred to in his own trademark application for “NEXTDOOR” filed on December 28, 2011 (three months after the Company’s launch of its website, and ten months after its application to register the NEXTDOOR trademark). *Id.* ¶¶ 9, 15-16.

On February 9, 2012, Abhyanker filed a separate Notice of Opposition against the Company’s registration of the NEXTDOOR mark (“the Second Opposition”), this time claiming that it was invalid due to the existence of his trademark application for the phrase FATDOOR GET TO KNOW YOUR NEIGHBORS—an application Abhyanker had filed only one day prior to submitting the Second Opposition.⁵ RJN Ex. 6. The Second Opposition asserted that the NEXTDOOR mark was used for a product confusingly similar to “FATDOOR GET TO KNOW YOUR NEIGHBORS.” It was thus premised—like all of Abhyanker’s claims before his revisionism for this action—on the concept that the “Nextdoor” idea was one and the same with “Fatdoor,” not “separate and distinct.” *Compare* Second Opposition ¶ 5 (alleging that the FATDOOR GET TO KNOW YOUR NEIGHBORS mark is confusingly similar to Nextdoor.com’s NEXTDOOR mark due to in part to being used on nearly “identical” goods and services) to AC ¶ 119 (alleging that Fatdoor and LegalForce/Nextdoor concept are “separate and distinct”). It further asserted that although Abhyanker never owned the domain www.nextdoor.com, he “used the name FATDOOR as a second preference until the ‘www.nextdoor.com’ domain could be acquired.” *Id.* ¶ 12.

With this alternate litigation at the TTAB in place, and recognizing the failings of his misappropriation claims in the State Court Action, Abhyanker abruptly dismissed that action on February 7, 2012 before the court ruled on the demurrers. RJN Ex. 5.

D. The Present Proceedings

On November 5, 2012, Nextdoor.com instituted the present action. It seeks both a

⁴ Like his pleadings in the State Court Action, this Court may also take judicial notice of pleadings Abhyanker filed in the TTAB.

⁵ These proceedings have been suspended pending the determination of this action. *See* RJN Ex. 7.

1 declaration that it is lawfully using the NEXTDOOR mark and asserts claims against Abhyanker
2 for Cyberpiracy and False Designation of Origin under the Lanham Act. *See* Dkt. 1 (the “DJ
3 Complaint”). Nextdoor.com’s affirmative claims seek to stop Abhyanker’s adoption and use of
4 the term “Nextdoor,” as well as his registration of the domain name www.nextdoor.cm,
5 commencing shortly *after* Nextdoor.com’s public launch. Nextdoor.com alleges that Abhyanker
6 took these steps for the purpose of confusing the public and attempting to leverage a claim against
7 the Company. *Id.*

8 Abhyanker responded with a Counterclaim, which partially recycled and partially
9 recharacterized his previously abandoned claims in the State Court Action. As in the State Court
10 Action, Abhyanker did not allege that he ever worked for, or had any contact with Nextdoor.com
11 prior to its launch. But he generally alleged that he disclosed a number of vaguely identified
12 trade secrets to Counterdefendants Benchmark Capital and Sandeep Sood in 2006 and 2007
13 (before Abhyanker was fired by Fatdoor, Inc.), and that these Counterdefendants disclosed those
14 purported secrets to Nextdoor.com and Janakiraman in breach of confidentiality obligations. *See*
15 *generally* Counterclaim.

16 In support of these claims, Abhyanker alleged a vague and unsupported laundry list of
17 components and features of websites that are purportedly “trade secrets” and that he claimed
18 personally to have developed and owned. Counterclaim ¶ 149. But Abhyanker did not identify
19 why and/or how he, rather than Fatdoor, Inc.—the corporation that operated the
20 www.fatdoor.com social networking website, and which sought funding from Benchmark—could
21 own these purported secrets. *See* First Opposition ¶ 14 (“Fatdoor, Inc., used the domain
22 ‘Fatdoor.com’ as a second preference until the ‘www.nextdoor.com’ domain could be acquired”).

23 Moreover, Abhyanker did not identify any of these purported secrets that were actually
24 disclosed to, or used by Nextdoor.com—other than the name “nextdoor.com” and the concept of a
25 private neighborhood social network, both of which are plainly disclosed in the ‘442 Application.

26 Based on those failings, Nextdoor.com and Janakiraman (along with the other
27 Counterdefendants) filed motions to dismiss Abhyanker’s Counterclaim and to strike
28 Abhyanker’s cursory affirmative defenses. *See, e.g.,* Dkt. 38. Tacitly admitting the insufficiency

1 of his Counterclaim and affirmative defenses, Abhyanker filed his Amended Counterclaim on
 2 April 8, 2013 in lieu of responding to that motion. While Abhyanker dropped all his other causes
 3 of action, his other amendments do nothing to cure the myriad deficiencies with his
 4 misappropriation claim. Further, the Amended Answer contains no changes and thus still fails to
 5 plead any facts in support of his affirmative defenses. Indeed, the only significant change
 6 between Abhyanker's initial and amended pleading is that he has concocted yet another tale
 7 purporting to explain how he, not Fatdoor or Google, personally owns the purported trade secrets
 8 at issue.

9 ARGUMENT

10 Dismissal is appropriate under Rule 12(b)(6) where there is either a lack of a cognizable
 11 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *In re*
 12 *SRAM Antitrust Litig.*, 580 F. Supp. 2d 896, 900 (N.D. Cal. 2008). To survive a Rule 12(b)(6)
 13 motion to dismiss, a complaint or counterclaim must "contain either direct or inferential
 14 allegations respecting all the material elements necessary to sustain recovery under some viable
 15 legal theory." *Bell Atl. Corp.*, 550 U.S. at 562 (citation omitted). "[A] plaintiff's obligation to
 16 provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions,
 17 and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. Instead,
 18 the allegations "must be enough to raise a right to relief above the speculative level." *Id.*
 19 (internal citations omitted). In other words, the complaint must set forth enough facts to state a
 20 claim that is "plausible on its face," that is, "plausibly suggesting (not merely consistent with)" a
 21 right to relief. *Id.* at 557; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).
 22 "A claim is plausible on its face 'when the plaintiff pleads factual content that allows the court to
 23 draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Ashcroft*
 24 *v. Iqbal*, 129 S. Ct. 1937, 1940 (2009).

25 Where one of multiple theories pled in support of a cause of action is deficient, courts
 26 should dismiss those theories separately. *See, e.g., Architectural Mailboxes, LLC v. Epoch*
 27 *Design, LLC*, Case No. 10-cv-974, 2011 U.S. Dist. LEXIS 46180, at *18 (S.D. Cal. Apr. 28,
 28 2011) (dismissing Lanham Act unfair competition claim to the extent it relied upon an alternate

1 and deficient false designation of origin theory while allowing this same claim to go forward on a
 2 false advertising theory); *Burch v. GMAC Mortgage, LLC*, No. C-09-4214, 2010 U.S. Dist.
 3 LEXIS 23659, at *5 n.1 (N.D. Cal. Mar. 15, 2010) (dismissing Truth in Lending Act claim to the
 4 extent it relied upon a deficient failure to deliver theory while allowing this same claim to go
 5 forward on a second alternate theory); *Champlaie v. BAC Home Loans Servicing, LP*, 706 F.
 6 Supp. 2d 1029, 1055 (E.D. Cal. 2009) (granting motion to dismiss as to certain specific theories
 7 plead in support of a cause of action).

8 In ruling on a motion to dismiss, the Court need not accept as true any conclusory
 9 allegations, legal conclusions, unwarranted deductions of fact or unreasonable inferences. *See*
 10 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). The Court may also
 11 disregard allegations that are contradicted by documents attached to the complaint, incorporated
 12 by reference, or otherwise judicially noticeable. *See Shwarz v. United States*, 234 F.3d 428, 435
 13 (9th Cir. 2000); *Steckman v. Hart Brewing Inc.*, 143 F.3d 1293 (9th Cir. 1988); *Coto Settlement v.*
 14 *Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010); *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th
 15 Cir. 1998); *Intri-Plex Technologies, Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007).

16 Nor must the Court give credence to allegations that are contradicted by allegations in the
 17 plaintiff's prior pleading. *See, e.g., Adams v. Vivo Inc.*, C 12-01854, 2012 U.S. Dist. LEXIS
 18 109199, at *7 (N.D. Cal. Aug. 3, 2012) ("The district court will not accept as true pleading
 19 allegations that are contradicted by facts that can be judicially noticed or by other allegations or
 20 exhibits attached to or incorporated in the pleading"); *Bauer v. Goss*, C 12-00876, 2012 U.S. Dist.
 21 LEXIS 95334, at *9-*10 (N.D. Cal. July 10, 2012) (dismissing complaint where plaintiff
 22 attempted to contradict allegations in a previous pleading). This prohibition on contradicting
 23 prior allegations applies with equal force to those made in pleadings filed in other actions,
 24 including those filed in other courts. *See, e.g., Falcocchia v. Saxon Mortg., Inc.*, 709 F. Supp. 2d
 25 873, 887 (E.D. Cal. 2010) (plaintiff cannot contradict documents submitted in prior state court
 26 action); *Tripathi v. Thomson*, CV 03-1122, 2005 U.S. Dist. LEXIS 38093, at *6 (D. Ariz. Dec. 27,
 27 2005) (dismissing complaint *sua sponte* following "judicial notice of state court records which are
 28 contradictory to Plaintiff's allegations").

Under these standards, Abhyanker's claim fails for the reasons set forth below.

I. ANY TRADE SECRET RIGHTS IN THE NEXTDOOR NAME AND CONCEPT DISAPPEARED WHEN THEY WERE PUBLICLY DISCLOSED.

First and foremost, Abhyanker could never base a claim for misappropriation on the acquisition or use of the concept of an online neighborhood-based social networking service called "Nextdoor," *because Abhyanker disclosed that concept in a patent application he filed in November 2006 that was published to the world in September 2007*. This was nearly five years before Nextdoor launched its service (AC ¶ 159) and well in advance of Sood's alleged disclosure of the concept to Nextdoor.com and Janakiraman, which supposedly took place in 2010. *Id.* ¶¶ 145-147.⁶ Because this is the only purported trade secret that Abhyanker actually alleges Nextdoor.com or Janakiraman used (*see* Part II, *infra*), this is fatal to his claim in its entirety.

The law is clear that disclosure of a trade secret in a patent application releases that information to the public and, accordingly, extinguishes any trade secret protection that might exist. *See, e.g., Forcier v. Microsoft Corp.*, 123 F. Supp. 2d 520, 528 (N.D. Cal. 2000) ("all of Forcier's alleged trade secrets had been placed in the public domain either in patents or in patent applications . . . more than a year before Microsoft purchased the technology from Aha! . . . Consequently, the element of secrecy was gone by the time that Microsoft acquired the information, the 'trade secret' status was extinguished"); *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 587 F.3d 1339, 1355-56 (Fed. Cir. 1999) (applying California law and holding that disclosure of trade secret information in a foreign patent eliminates any trade secret protection). Following disclosure, the information is no longer a secret, and, accordingly, cannot be misappropriated as a matter of law. *Forcier*, 123 F. Supp. 2d at 528.

Abhyanker's published '442 Application describes in specific terms a map-based, neighborhood social network in which users could post information about themselves and their communities. RJN Ex. 1 (*see, e.g.,* Abstract and Figures 1, 8, 9). Abhyanker's own allegations confirm that the application relates "generally to geo-spatial database, architecture, and

⁶ Abhyanker offers no facts concerning when Benchmark allegedly disclosed the purported Nextdoor Trade Secrets to Nextdoor.com or Janakiraman.

1 application technologies associated with neighborhood communication and social networking.”
 2 AC ¶ 167. While most of the figures called this system Fatdoor, Abhyanker *explained that one*
 3 *embodiment was to be called “nextdoor.com.”* *Id.* at p.56, ¶ 236 (emphasis added).

4 In an attempt to duck this complete barrier to his claim, Abhyanker amended his
 5 counterclaim to now state that Fatdoor’s patent application “does not refer to the use of the
 6 Nextdoor mark in conjunction with a private social network for neighbors.” AC ¶ 115. This is—
 7 in a word we use rarely, but very literally here—disingenuous. The judicially noticeable face of
 8 the ‘442 Application shows the use of the name nextdoor.com as an embodiment of the
 9 neighborhood social network idea (RJN Ex. 1 at p.56, ¶ 236), and an annotated excerpt of the
 10 ‘442 Application that Abhyanker posted on his website after this lawsuit was filed, as “evidence”
 11 relating to his counterclaim, explains that the application discloses that “at least one of the
 12 embodiments will be used will be on ‘nextdoor.com.’” RJN Ex. 7.

13 Paragraph 236 of the ‘442 Application describes by its terms “one embodiment” of “the
 14 methods and systems illustrated in FIGS. 1-28.” *Id.* at p.56, ¶ 236. Paragraph 236 goes on to
 15 describe a method of deriving advertising revenues *internal* to that neighborhood social network,
 16 including how “[a]dvertisers can ‘own’ their listings by placing a display ad on “nextdoor.com,”
 17 and how advertising revenue is realized when a link *internal* to the social network described by
 18 the patent is clicked, without actions taken *outside* of the social network. *Id.* Paragraph 236
 19 (which refers this social network as “nextdoor.com”) explicitly does *not* discuss actions taken
 20 outside of the social network. Contrary to the facially false mischaracterization of Abhyanker’s
 21 Amended Counterclaim (AC ¶ 115), the entire focus of Paragraph 236 is discussing an
 22 embodiment of an internal advertising system on a social network to be called nextdoor.com
 23 (RJN Ex. 1 at p.56, ¶ 236), not some reference to external software, let alone a third-party
 24 website. Abhyanker’s effort to now recharacterize this name included in the patent as referring to
 25 something other than the invention the patent purported to describe is specious. Indeed, in the
 26 State Court Action, Abhyanker specifically pointed to the ‘442 Application’s disclosure of the
 27 name nextdoor.com as evidence of his rights in the name, arguing that “‘Nextdoor.com’ was
 28 clearly associated as the domain name intended to be used by Fatdoor, Inc” in the ‘442

1 Application. FAC ¶ 33 (also attaching the '442 Application as Exhibit D to the FAC).

2 There can be no dispute from the face of Fatdoor's '442 Application, and Abhyanker's
3 own admissions concerning it, that the concept of a neighborhood social networking website
4 using the name "nextdoor.com" in some manner was disclosed years in advance of
5 Nextdoor.com's adoption of the "Nextdoor" name for its neighborhood social networking
6 website. Nextdoor thus could not have misappropriated any trade secret in that concept or name
7 because, as a matter of law, it was not a trade secret. *See Ultimax Cement Mfg.*, 587 F.3d at 1355
8 (rejecting argument that "a secret's availability from a published source is not a defense to trade
9 secret theft under California law unless [the defendant] also obtained the secret from the
10 published source").

11 Thus, at a minimum, this Court should dismiss Abhyanker's trade secret misappropriation
12 claim with prejudice to the extent that it is based upon the purported theft of the "nextdoor.com"
13 name or social networking concept. *See, e.g., Architectural Mailboxes*, 2011 U.S. Dist. LEXIS
14 46180, at *18 (dismissing Lanham Act unfair competition claim to the extent it relied upon an
15 alternate and deficient false designation of origin theory while allowing this same claim to go
16 forward on a false advertising theory). Moreover, because, as discussed in Part II, *infra*, no other
17 purported trade secret is described with any factual specificity or alleged to have been disclosed
18 to or used by the Company or Janakiraman, the lack of any trade secret protection in the name
19 and general business concept is fatal to Abhyanker's entire claim.

20 **II. ABHYANKER HAS NOT ADEQUATELY ALLEGED TRADE SECRET** 21 **MISAPPROPRIATION.**

22 To allege a claim for trade secret misappropriation, Abhyanker must allege (1) ownership
23 of a valid trade secret, (2) that the defendant acquired, disclosed, or used the trade secret through
24 improper means, and (3) that the defendant's actions have harmed the plaintiff. *See, e.g.,*
25 *Nexsales Corp. v. Salebuild, Inc.*, No. C-11-3915, 2012 WL 216260, at *2 (N.D. Cal. Jan. 24,
26 2012) (Chen, J.). Among its many defects, Abhyanker's claim for trade secret misappropriation
27 fails because he has not alleged any facts in support of at least two of these elements: (1) that the
28 defendant acquired, disclosed, or used a trade secret through improper means and (2) that the

defendant's actions have harmed the plaintiff.⁷ Abhyanker must plead *facts* in support of these elements—not just conclusions. *Id.* (conclusory allegations of trade secret misappropriation are insufficient to defeat a motion to dismiss); *Bespaq Corp. v. Haoshen Trading Co.*, No. C 04-3698, 2005 WL 14841, at *4 (N.D. Cal Jan. 3, 2005) (bare allegation that the defendant misappropriated purported trade secrets too conclusory to state a claim for trade secret misappropriation).

A. Abhyanker Has Failed to Allege How Nextdoor.com or Janakiraman Wrongfully Acquired or Used His Trade Secrets.

Trade secret misappropriation requires either (1) the acquisition of a trade secret by improper means, or (2) the use or disclosure of a trade secret known to have been acquired by improper means. Cal. Civ. Code §§ 3246.1(b)(1) and (2). Abhyanker still fails to allege facts explaining how Nextdoor.com or Janakiraman either acquired or used his alleged trade secrets. Again, *facts* are required to support these essential elements of the claim. *See Pellerin v. Honeywell Int'l Inc.*, 11-CV-01278, 2012 U.S. Dist. LEXIS 94635, at *11 (S.D. Cal. July 6, 2012). Bare conclusions and unwarranted inferences—which are the most the Amended Counterclaim offers—are insufficient. *Id.*

1. Abhyanker Has Failed to Allege Wrongful Acquisition.

With respect to the purported acquisition of the so-called LegalForce/Nextdoor Trade Secrets, Abhyanker conclusorily alleges that Benchmark Capital, a potential investor in Fatdoor, and Sood, a former contractor of Abhyanker, disclosed the LegalForce/Nextdoor Trade Secrets to Nextdoor.com and Janakiraman. AC ¶¶ 135, 141, 143, 147, 149. But there is not a single fact pled in the Amended Counterclaim to warrant this conclusion. Only rank conjecture and speculation, generally pleaded on information and belief. *See, e.g., id.* ¶¶ 144, 149. As to the alleged disclosure by Benchmark Capital, Abhyanker alleges that two of Nextdoor.com's

⁷ Moreover, most of the laundry list of purported trade secrets that Abhyanker has alleged (AC ¶ 170) are insufficiently pleaded to meet the first prong of a trade secret misappropriation claim. *See, e.g., Farhang v. Indian Institute of Technology*, 08–02658, 2010 WL 2228936, at *13 (N.D. Cal. June 1, 2010) (allegation of misappropriation of “business models and implementations” of mobile data access system insufficiently specific to state a misappropriation claim and survive a motion to dismiss).

founders, Nirav Tolia and Janakiraman, were entrepreneurs in residence at Benchmark Capital at the time Abhyanker disclosed the LegalForce/Nextdoor Trade Secrets to Benchmark. *Id.* ¶¶ 143, 149.⁸ And although Abhyanker refers to several individuals at Benchmark involved in assessing his request to fund Fatdoor (*see* AC ¶¶ 129, 131 and FAC ¶¶ 32-33), he pointedly does not allege that he disclosed any of the LegalForce/Nextdoor Trade Secrets to Tolia or Janakiraman. He did not.

Nor does Abhyanker allege who at Benchmark allegedly disclosed these “secrets” to Tolia or Janakiraman; what trade secret information was disclosed; or when or how this alleged disclosure occurred. Instead, Abhyanker simply opines that “[i]t is much too coincidental that both the founders of Nextdoor.com would be EIRs at Benchmark Capital when Abhyanker disclosed Abhyanker’s LegalForce/Nextdoor Trade Secrets to Benchmark Capital.” *Id.* ¶ 143. Abhyanker also offers pure speculation “upon reason and belief” that Janakiraman and Tolia “researched the history of Abhyanker’s LegalForce/Nextdoor trade secrets” by looking through Benchmark’s files. *Id.* ¶ 149. But again, Abhyanker has pled no facts to support this wild conclusion, no statement of when or how this occurred, nor has he identified which of the purported secrets allegedly were acquired. This is baseless conjecture that falls far short of the plausibility standard.

Likewise, as to the alleged disclosure by Sood (who purportedly worked with or for Abhyanker for a brief period in 2006 (*id.* ¶110)), the Amended Counterclaim alleges that Sood and Janakiraman attended Berkeley and are friends (*id.* ¶¶ 138-141) and that Sood participated in a survey Nextdoor.com sent to its friends and family members in 2010 to gather their feedback regarding the Company’s already existing concept for an online neighborhood social network. *Id.* ¶ 146.⁹ Based on these innocent facts and Sood’s alleged “downplay[ing]” of his relationship

⁸ In fact, this allegation regarding EIR status is untrue. But even accepted as true for purposes of this motion it would not infer any disclosure. To the contrary, as Abhyanker has alleged, Tolia and Janakiraman did not start the Company on a local-social networking project; their first product was the fanbase.com website in 2007. AC ¶ 107. The fact that the Company did not pivot towards local social networking for some three years—a generation in internet time—makes it entirely implausible that it did so based on any secrets disclosed in 2007.

⁹ By alleging that Nextdoor.com conducted this survey, Abhyanker necessarily concedes that it had *already come up with the concept for an online neighborhood-based social network* prior to

1 with Janakiraman, Abhyanker concludes that “Sood was trying to conceal his wrongful conduct
2 of disclosing Abhyanker’s LegalForce/Nextdoor Trade Secrets to Janakiraman and
3 Nextdoor.com.” *Id.* ¶¶ 139, 141. In essence, Abhyanker asks the Court to conclude that because
4 Sood and Janakiraman were friends, and because Janakiraman was employed by Nextdoor.com,
5 disclosure was inevitable. However, California courts reject the doctrine of inevitable disclosure
6 even in the employment context, let alone among friends. *See Les Concierges, Inc. v. Robeson*,
7 C-09-1510, 2009 U.S. Dist. LEXIS 39414, at *4 (N.D. Cal. Apr. 27, 2009) (“a threat of
8 misappropriation cannot, as a matter of California law, be inferred from the fact Robeson, upon
9 voluntarily terminating his employment with LC US, immediately began working for a direct
10 competitor and appears to be performing for his new employer the same or similar job duties”).

11 Regardless, however, the only supposed trade secrets that Sood is alleged to have
12 disclosed cannot give rise to any viable claim here. Abhyanker alleges that Sood disclosed two
13 purported secrets to Janakiraman and Nextdoor: the name Nextdoor to be used in an online
14 neighborhood-based social networks and generically described “neighborhood level privacy
15 controls.” *Id.* ¶ 147. As to the name Nextdoor for an online social network, as discussed above,
16 it cannot form the basis of any trade secret misappropriation claim here because it was publicly
17 disclosed prior to any supposed misappropriation. *See Part I, supra.* As to “neighborhood level
18 privacy controls,” this allegation does not sufficiently identify any trade secret to survive a
19 motion to dismiss as a matter of law, and accordingly is not sufficient to establish any unlawful
20 acquisition of a trade secret. *Farhang*, 2010 WL 2228936, at *13 (allegation of misappropriation
21 of “business models and implementations” of mobile data access system insufficiently specific to
22 state a misappropriation claim and survive a motion to dismiss); *Diodes, Inc. v. Franzen*, 260 Cal.
23 App. 2d 244, 253 (1968) (“secret process” for the manufacture of diodes insufficient to state a
24 claim); *Bespaq Corp. v. Haoshen Trading Co.*, No. C 04-3698, 2005 WL 14841, at *4 (N.D. Cal.
25 Jan. 3, 2005) (allegations that defendant misappropriated “customer lists,” “pricing information,”
26 and “marketing strategies” regarding dollhouse furniture too conclusory to state a claim).

27 Moreover, even if Abhyanker had alleged facts sufficient to support a conclusion that
28 any disclosure of trade secrets that Sood may have made in his survey response or thereafter.

Nextdoor.com or Janakiraman ever acquired the purported LegalForce/Nextdoor Trade Secrets, he has still failed to allege any facts demonstrating that they *wrongfully* acquired those secrets—*i.e.*, that they knew or had reason to know they were secret or that Benchmark Capital or Sood were breaching any confidentiality obligations by (purportedly) disclosing them. Such knowledge is an essential component of a claim premised upon receipt of a trade secret. *See* Cal. Civil Code § 3246.1(b)(1); *MedioStream, Inc. v. Microsoft Corp.*, 869 F. Supp. 2d 1095, 1114 (N.D. Cal. 2012) (dismissing for failure to include facts demonstrating that the defendant knew or had reason to know that it was acquiring confidential material by improper means). Here, all Abhyanker has alleged is a conclusion that Nextdoor and Janakiraman were “fully aware” of Benchmark Capital and Sood’s confidentiality obligations. AC ¶ 175. No facts support this conclusion. There is no allegation of how, when, or where Nextdoor.com or Janakiraman learned of such purported confidentiality obligations; it is pure speculation that utterly fails to warrant an inference that they actually had the knowledge necessary for wrongful acquisition.

2. Abhyanker Has Failed to Allege Wrongful Use.

With respect to Abhyanker’s theory that Nextdoor.com and Janakiraman used his trade secrets, his allegations are even more deficient. Beyond the use of the name “Nextdoor” in connection with an online neighborhood-based social network (which is not actionable for the reasons set forth in Part I, *supra*), Abhyanker fails to identify any of the purported LegalForce/Nextdoor Trade Secrets that actually were used, much less how. There is no allegation that any secret algorithm, plan, concept, or detail was used by Nextdoor.com.¹⁰ Threadbare allegations that Nextdoor.com and Janakiraman “use[d] the LegalForce/Nextdoor Trade Secrets as the foundation of their business” are not nearly enough. AC ¶ 175; *Pellerin*, 2012 U.S. Dist. LEXIS 94635, at *8-*10 (identification of an end product along with conclusory allegations that it uses the plaintiff’s trade secrets are insufficient). Plaintiff has alleged a host of

¹⁰ Abhyanker’s assertion that Nextdoor.com’s decision to prototype its service (with the name “Neighborly”) in the Lorelei neighborhood of Menlo Park in October 2010 is “irrefutable evidence” that Nextdoor.com must have misappropriated his trade secrets is more unsupported speculation. AC ¶ 153. He does not plead that Nextdoor.com had any knowledge that Abhyanker had any connection to or made any use of the Lorelei neighborhood, much less that such use was a trade secret. Indeed, it is difficult to fathom how the use of a neighborhood for beta testing of a service could ever be a trade secret.

1 purported secrets in his Amended Counterclaim; if he wishes to proceed with claims that
2 Nextdoor misappropriated them, he has to identify which ones and plead facts plausibly
3 suggesting that this is the case.

4 As Abhyanker has failed to plead any facts demonstrating that Nextdoor.com or
5 Janakiraman unlawfully acquired or used his purported trade secrets, his claims should be
6 dismissed.

7 **B. Abhyanker Has No Plausible Theory of Damages.**

8 Abhyanker also fails to allege facts in support of the third element of a claim for
9 misappropriation: that he suffered harm. Under California law, a plaintiff must establish that he
10 has been directly harmed by the alleged misappropriation. *Computer Sciences Corp. v. Computer*
11 *Assocs. Int'l, Inc.*, CV 98-1374, 1999 U.S. Dist. LEXIS 21803, at *42 (C.D. Cal. Aug. 13, 1999).
12 Abhyanker's own allegations in the State Court Action (discussed below) make clear that he did
13 not own the trade secrets at issue or even still work for the company (Fatdoor and its successors)
14 that did own them at the time of the purported misappropriation. He is thus hard pressed to argue
15 that he suffered harm from the theft of trade secrets he does not own, either then or now.

16 **III. ABHYANKER ADMITTEDLY DOES NOT OWN ANY OF THE PURPORTED**
17 **TRADE SECRETS ASSERTED HERE.**

18 In all events, Abhyanker's claim fails because he does not own the purported trade secrets
19 asserted here. Under the California Uniform Trade Secrets Act ("CUTSA"), ownership of a valid
20 trade secret is a prerequisite to a claim for trade secret misappropriation. *See, e.g., California*
21 *Police Activities League v. California Police Youth Charities, Inc.*, No. C 08-1991, 2009 WL
22 537091, at *4 (N.D. Cal. Mar. 3, 2009) (dismissing claim for failure to allege ownership).
23 Abhyanker does not and cannot allege facts in support of this threshold element.

24 While Abhyanker conclusorily alleges that he owns a laundry list of vaguely identified
25 trade secrets related to the Nextdoor business concept (AC ¶ 170), that conclusion should be
26 disregarded because it is flatly contradicted by Abhyanker's own previous concessions in the
27 State Court Action and before the TTAB.¹¹ In the State Court Action, Abhyanker candidly

28 ¹¹ Abhyanker's story for the ownership and development of those trade secrets varies significantly

1 admitted that he does not own any of the Fatdoor/Nextdoor trade secrets—instead explaining that
 2 they were acquired by Google through its acquisition of Fatdoor, Abhyanker’s previous
 3 employer. Specifically, Abhyanker alleged in both his initial Complaint and FAC in the State
 4 Court Action that “[t]he entire basis for Nextdoor.com, Inc.’s business rests on these stolen and
 5 misappropriated materials *now owned by Google, Inc.* through its acquisition of the
 6 Nextdoor/Fatdoor patent portfolio.” Complaint ¶ 5; FAC ¶ 23 (emphasis added). Abhyanker
 7 further explained that, having purchased the assets of the successors to Fatdoor, Inc., “Google,
 8 Inc. now owns the rights to the original technology of the Nextdoor/Fatdoor concept” (FAC ¶
 9 169) and that he attempted to bring Google into his lawsuit as a plaintiff. *Id.* ¶ 163. Similarly, in
 10 his first TTAB Opposition, Abhyanker acknowledged that “Fatdoor, Inc. intended to purchase the
 11 ‘www.nextdoor.com domain name shortly after Series B funding.” First Opposition ¶ 14.
 12 Abhyanker also represented to the TTAB that “Fatdoor, Inc., used the domain ‘Fatdoor.com’ . . .
 13 and created a website named Fatdoor,” for which Abhyanker “on behalf of Fatdoor, Inc., filed a
 14 US federal trademark application for the mark FATDOOR” covering the same computer services
 15 alleged to involve the trade secrets here. Second Opposition ¶ 19. As Abhyanker’s prior
 16 pleadings made clear, any trade secrets, including potential use of the domain name
 17 “www.nextdoor.com,” were the property of Fatdoor, Inc., and are now the property of Google.

18 Abhyanker’s Counterclaim and now Amended Counterclaim are transparent attempts to
 19 avoid the effect of these previous concessions by shifting his claims to a different forum. But
 20 Abhyanker cannot escape his previous admissions. They are binding, and the Court should not
 21 accept Abhyanker’s revisionism. *See, e.g., Falcocchia*, 709 F. Supp. 2d at 887 (dismissing based
 22 on contradictory allegations in previous state court filings); *Tripati*, 2005 U.S. Dist. LEXIS
 23 38093, at *6 (same); *Bauer*, 2012 U.S. Dist. LEXIS 95334, at *8-*10 (dismissing claims based on
 24 contradictions between complaints). *Bauer* is instructive on this point. In that case, the plaintiff
 25 had alleged in its original complaint that it entered into a written agreement with the defendant for
 26 even between his original Counterclaim in this action (alleging that he personally developed and
 27 owned the trade secrets) and this Amended Counterclaim (alleging that he developed the trade
 28 secrets on behalf of his now defunct company LegalForce). Compare Counterclaim ¶ 108
 (describing the development of the “Nextdoor Trade Secrets”) to AC ¶ 109 (describing the
 development of the “LegalForce/Nextdoor Trade Secrets”).

1 the provision of legal services. *Id.* at *8. That agreement contained a forum selection clause
 2 designating Washington as the proper forum for any dispute. Following a motion to dismiss the
 3 California action for improper venue, the plaintiff filed an amended complaint contending that the
 4 defendant was *not* a party to any agreement with the plaintiff. *Id.* at *8-*9. The court refused to
 5 credit these allegations, explaining that they were contradicted by the plaintiff's original
 6 complaint, and dismissed the case. *Id.*

7 Abhyanker's amended allegations in this action only underscore that he does not own any
 8 of the trade secrets asserted here. He now admits *in this action* that he assigned any trade secret
 9 rights he may have had to Fatdoor, Inc. in February of 2007, *several months before Abhyanker*
 10 *even met with Benchmark* (AC ¶ 129) and several *years* before Sood's purported disclosure to
 11 Nextdoor.com in 2010 (*id.* ¶¶ 145-147). AC ¶ 114. Although Abhyanker now alleges in this
 12 action that such assignment did not include the Legalforce/Nextdoor Trade Secrets, this is
 13 contradicted by his allegation in the State Court Action that the assignment covered several
 14 existing patent applications along with "hundreds of pages of documents that became the basis for
 15 more than 46 patent applications" assigned by Abhyanker to Fatdoor (*id.*)—the same 46 patent
 16 applications that Abhyanker alleged in the State Court Action were related to the *Nextdoor*
 17 concept and that formed the basis for his claims of trade secret misappropriation there. *See, e.g.,*
 18 FAC ¶¶ 20-23 (describing the alleged misappropriation of the information in these 46 patent
 19 applications and that "[t]he entire basis for Nextdoor.com, Inc.'s business rests on these stolen
 20 and misappropriated materials now owned by Google, Inc. through its acquisition of the
 21 Nextdoor/Fatdoor patent portfolio").¹² The Court should reject Abhyanker's inconsistent,
 22 nonsensical allegations and dismiss this claim on the merits.

23
 24
 25 ¹² One of these 46 patent applications was the '442 Application. *Id.* ¶ 120; RJN Ex. 1. As
 26 discussed in Part I, *supra*, that application explicitly discloses the concept of a neighborhood
 27 social networking website to be called nextdoor.com as one of its embodiments. RJN Ex. 1 at
 28 p.56, ¶ 236. So regardless of whether Abhyanker owned any trade secrets relating to his
 Nextdoor concept separately from Fatdoor, the name "Nextdoor" was assigned to Fatdoor and
 eventually Google. Given that the only supposed trade secret that Abhyanker has alleged
 Nextdoor.com to have used is this name, his Amended Counterclaim should be dismissed for this
 reason alone.

1 **IV. ABHYANKER'S AFFIRMATIVE DEFENSES ARE INSUFFICIENT AND**
2 **SHOULD BE STRUCK.**

3 Finally, Abhyanker's Amended Answer asserts various affirmative defenses to Nextdoor's
4 declaratory judgment claims. Nearly universally, those defenses are based on nothing beyond a
5 bare recitation of a doctrine and a claim that it preempts Nextdoor's claims.

6 "[A]n affirmative defense may not simply reference a doctrine. At a minimum, a pleading
7 must set out the elements of the affirmative defense and some factual allegations that meet those
8 elements." *Hynix Semiconductor Inc. v. Rambus Inc.*, CV-00-20905, 2007 U.S. Dist. LEXIS
9 97677, at *39 (N.D. Cal. Nov. 15, 2007) (citation omitted). A bare recitation of the elements as a
10 conclusion is insufficient. *Id.*; *see also Ansari v. Elec. Document Processing, Inc.*, No. 5:12-cv-
11 01245, 2012 U.S. Dist. LEXIS 128622, *5 (N.D. Cal. Sep. 10, 2012) (striking all affirmative
12 defenses). At the very least, Abhyanker's Third (Lack of Standing), Fourth (Statute of
13 Limitations), Sixth (Estoppel), Seventh (Laches), Eighth (Acquiescence), Ninth (Waiver), Tenth
14 (Unclean Hands), Eleventh (Unenforceability), and Twelfth (Fraud on the USPTO) Affirmative
15 Defenses are based on nothing more than a bare recitation of a doctrine. There is certainly no
16 other information in the Answer to support them. This is not sufficient, and they should be
17 struck. *See, e.g., Perez v. Gordon & Wong Law Group, P.C.*, No. 11-cv-03323, 2012 U.S. Dist.
18 LEXIS 41080, at *39-*41 (N.D. Cal. Mar. 26, 2010) (striking statute of limitations, laches,
19 unclean hands, and waiver defenses, among others); *Monster Cable Products, Inc. v. Avalance*
20 *Corp.*, No. 08-4792, 2009 U.S. Dist. LEXIS 23747, at *2-*8 (N.D. Cal. Mar. 11, 2009) (striking,
21 *inter alia*, laches, estoppel, acquiescence, and statute of limitations affirmative defenses).

CONCLUSION

For the foregoing reasons, Abhyanker's claims for trade secret misappropriation against Nextdoor.com, Inc. and Prakash Janakiraman should be dismissed with prejudice, and his affirmative defenses should be struck.

Dated: April 25, 2013

FENWICK & WEST LLP

By: /s/ Jennifer L. Kelly
Jennifer L. Kelly

Attorneys for Plaintiff and Counterdefendant
NEXTDOOR.COM, INC. and Counterdefendant
PRAKASH JANAKIRAMAN

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO